

attached, the Applicant amends the title consistent with the Examiner's suggestions. Therefore, the Applicant respectfully asks the Examiner to withdraw his objection to the title.

CLAIMS

37 CFR 1.75 (c) – Improper Multiple Dependent Claims. The Examiner objected to claims 12 and 14 as being improper multiple dependent claims. The Applicant agrees. Claim 12 has been re-stated in independent form, and claim 14, which depends therefrom was not multiple dependent. Therefore, the Applicant respectfully asks the Examiner to substantively examine these claims.

35 USC § 112 – Indefiniteness. The Examiner cited several objections based on 35 USC § 112. The Applicant respectfully submits that the claims, as amended in the substitute specification overcome the Examiner's objections. For example, the Examiner objected to the phrase "fixed intervals" in claim 1 since only one single interval was claimed therein; appropriate amendment to refer to a singular interval has been made. The Examiner's objection that the phrase "thereon at one fixed interval" on line 4 of claim 1 renders said claim indefinite is traversed. The phrases used are given specific definitions and meanings in the specification at page 7, starting on line 18. It is noted that the fixed interval in construction in the United States is usually either 16 or 24 inches. Those skilled in the art know well the typical spacing interval of construction members, and this phrase does not render the specification indefinite. The Examiner's objection to the "means" element in claim 2 is noted, and an appropriate amendment is made in claim 2 in the substitute specification. Therefore, the Applicant respectfully asks the Examiner to withdraw his section 112 objections.

35 USC § 102 – Anticipation. The Examiner rejected claims 1, 6 and 10 as being anticipated by Sobjack, Jr., U.S. Pat. No. 5,161,345. For the reasons noted below, Sobjack cannot be said to anticipate any of the claims of the present invention.

Claims 6 and 10 depend from claim 1: six claims layout stripping with more than one spacing interval thereon; ten claims layout stripping with partitions for closely, grippingly receiving more than one size of construction member. The Examiner did not identify anywhere within Sobjack where he claims stripping with more than one spacing interval thereon or adapted to receive more than one size of construction member. The Applicant has examined Sobjack and cannot find any claim or suggestion of multiple spacing intervals on the same strip. Further, the Applicant cannot find any claim or suggestion of adapting the strip to receive more than one size of construction member. Therefore, the Applicant respectfully asks the Examiner to withdraw his 102 rejection of claims 6 and 10.

The Examiner provided more detail relating to his allegation that Sobjack anticipates Claim 1. The Applicant first notes that all of Soback's claims are method claims. Nevertheless, he does describe an apparatus of sorts to be used in the claimed methods. Sobjack claims, for example, a flexible strap "premarked at said predetermined, spaced points." Claim 3. Sobjack further narrows his apparatus to include an "unobstructed hole...at each of said spaced points," and later a "grommet is provided at each of said spaced points." Claims 6 and 7. The "grommet" is described in Sobjack at col. 3, line 63 as follows: "When a hole is used as an attachment point, a grommet 26 may be provided to prevent tearing of the material when a construction nail is inserted

and a force placed on the lacer strap.”³ The purposes of the “holes,” “indelible premarking” or “dimpled indentations” is to provide a reference point at which to attach a construction member to the strap at the “spaced point” marked thereby. Claim 1, 4th element.

The present invention starts with the same basic apparatus as Sobjack: a flexible strap premarked at predetermined, spaced points.⁴ The similarity to Sobjack ends there. Sobjack does not illustrate, describe nor claim repeating units disposed on the base, the units having a plurality of pairs of uprights thereon, each pair of uprights defining a partition for receiving a specified size of framing member. Sobjack does claim and describe grommets to prevent the strap from tearing where it is attached to a framing member; it is entirely unclear what the examiner is citing from Sobjack to be a “pair of uprights defining a partition for receiving a specified size of framing member.” Claim 1, element b. The only possible element of Sobjack even arguably anticipates the present invention is the grommets. Sobjack describes the holes / grommets / dimples as typically located 24 inches apart. Sobjack at col. 2, line 27. Thus, unless the construction members in question were 24 inches wide, the grommets could not be said to define a partition for receiving a specified size of framing member. If the construction members were 24 inches wide, they would nearly abut one another with only a fraction of an inch between them; there is no construction application in the world where that would make sense. For the examiner’s argument that Sobjack anticipates the present invention to succeed, a patently ludicrous construction must be placed on Sobjack’s specifications and

³ Sobjack also claims an “indelible premarking” or a “dimpled indentation...at each of said spaced points.” Claims 8 and 9.

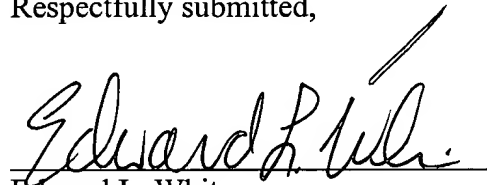
⁴ Claimed in the present invention as “a pliable, non-elastic elongated base...repeating units disposed on the base...on one fixed interval.” Claim 1.

claims. The law does not require, in fact does not allow, the use of a patently ludicrous claim construction to support a claim of anticipation. MPEP § 2111.01 (“the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification”).

Nevertheless, rather than relying on the obvious lack of anticipation, the Applicant amends the claims to make even clearer the differences between the present invention and Sobjack. The applicant amends the language “defining a partition for receiving a specified size of framing member,” in Claim 1 to read as follows: “adapted to defining a partition for closely, grippingly receiving a specified size of framing member.” This amendment clarifies the features that distinguish this application from Sobjack. The grommets cannot be said to be adapted to define a partition for “closely, grippingly” receiving a framing member. At best, the grommets could be said to define a partition between which a partition member might be placed, but this use of Sobjack’s device would be exactly the opposite of Sobjack’s teaching. Sobjack teaches that the construction member is placed in line with the hole defined through the grommet, through which hole a fastener (such as a nail) is placed, fastening the framing member to the strap. Sobjack at col. 3, lines 59 – 67 and col. 4, lines 36 – 38. The limitations in Sobjack’s claims clearly preclude the Examiner’s interpretation. Sobjack claims that the construction members are secured to the strap at “predetermined, spaced points on the strap.” Claim 1, 4th element. Thus, it is even clearer in light of the amendments to Claim 1 that Sobjack does not anticipate the present invention. Therefore, the Applicant respectfully asks the Examiner to withdraw his 102 rejection of claim 1.

35 USC §103 – Obviousness. Claims 2 – 5, 7 – 9, and 13 were rejected as being unpatentable over Sobjack in view of additional cited references. Since, as noted above, the Applicant believes that claims 1, 6 and 10 are novel in light of Sobjack, the Applicant asks that the Examiner re-examine these rejections in light of the argument and authority presented on that point. The Applicant also renews his request for the Examiner to comply with MPEP § 716.01 which requires that where the affidavit evidence is “insufficient to overcome the rejection, the examiner must specifically explain why the evidence is insufficient.” The Examiner gives absolutely no explanation whatsoever vis-à-vis the affidavits submitted. After said review, the Applicant asks that the Examiner withdraw his 103 rejection of claims 2 – 5, 7 – 9, and 13.

Respectfully submitted,



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